

Annapolis, Maryland, March 14, 1912.

The Board of Public Works met, this date, at 4:15 p. m., in the Governor's Office, Annapolis.

Present: Governor Goldsborough, Comptroller Harrington and Treasurer Vandiver.

The minutes of the previous meeting were read and approved.

The opinion of the Attorney General of Maryland in the matter of the status of the interest of the State of Maryland in the Philadelphia & Baltimore Central Railroad Company was laid before the Board, whereupon, on motion of General Vandiver, Seconded by Comptroller Harrington, the Secretary of the Board was instructed to forward a copy of said opinion to Mr. George W. Massey, Broad Street Station, Philadelphia, Pa., requesting a reply to the points raised therein. Motion carried.

The opinion of the Attorney General is as follows:

"March 7, 1912.

Hon. Phillips Lee Goldsborough,

Governor of Maryland,

Annapolis, Maryland.

Dear Sir:

I have carefully considered the status of the interest of the State of Maryland in the Philadelphia & Baltimore Central Railroad Company, growing out of the subscription by the State for 700 shares, par value \$50.00 per share, of the stock of the Company under the provisions of Chapter 303 of the Acts of 1860. In accordance with the provisions of that Act the State invested \$35,000 in the capital stock of the Philadelphia & Baltimore Central Railroad Company and the Company thereafter under date of the 15th, day of February, 1861, executed a mortgage to the State of all the Company's corporate property and of all its estate, real, personal and mixed and of every kind and description, and wheresoever situate, for the purpose of securing to the State payment of interest by the Company at the rate of 6% per annum on the \$35,000. subscribed by the State to the Company's capital stock, the said interest to be paid out of the profits of the work semi-annually forever thereafter. This mortgage was recorded in Cecil County on the 21st of February, 1861 but was not recorded in the State of Pennsylvania wherein a portion of the Railroad Company's railroad and property were located, so that subsequently, in order to cure this omission, on the 8th day of October, 1863, a supplemental mortgage similar to the original mortgage was executed by the Railroad Company and recorded in Pennsylvania on October 15th, 1863. At the time of the execution of these mortgages the Philadelphia & Baltimore Central Railroad Company owned and operated a railroad that extended for a distance of 9.28 miles in the State of Maryland, County of Cecil, and a distance of 36 1/2 miles in the State of Pennsylvania, in the counties of Delaware and Chester. In my opinion the obligation of the Philadelphia

& Baltimore Central Railroad Company as a result of the legislation of 1860 and the execution of the mortgages above referred to, is to pay interest at a rate not exceeding 6% semi-annually on the \$35,000. subscribed by the State, whenever the profits of the Railroad Company from its entire road enable it to do so. Moreover this obligation on the part of the Railroad Company is secured by a mortgage on the 9.28 miles of railroad in Maryland and the 36 1/2 miles of its railroad in the State of Pennsylvania, and a failure on the part of the Company to fulfill its obligation would entitle the State to institute proceedings looking to the foreclosure of the mortgages. So long as the entire road earns no profits the mere failure to pay interest on the \$35,000 does not amount to a violation of the Company's obligation to the State, but in determining the question of whether or not profits have been earned, the receipts and expenditures of the entire road, in my opinion, should be considered and not merely the receipts and expenditures of that part of the road that lies in the State of Maryland. Indeed, if the Philadelphia & Baltimore Central R. R. Co. has extended its mileage and increased its trackage since the execution of the mortgages, although the newly acquired property would not be subject to the operation of the mortgages, the receipts from the entire road as thus extended and expenses of the entire road as thus extended, should be taken into consideration in estimating whether or not the road has earned profits that should be applied to the payment of the interest on the State's investment. I have not failed to notice that Section 2 of Chapter 303 of the Acts of 1860 provides that the interest on the State's investment is to be paid out of the profits of the "work" but it is manifest that the word "work" is here used in the sense of "enterprise" and is not to be limited to the 9.28 miles of railroad in Cecil County. The subscription of the State was to the stock of the R. R. Co. and was not merely applicable to that part of the road in the State of Maryland. I call your attention to the fact that it seems that in 1881 the Phila. & Balto. Central R. R. Co. acquired the railroad, property rights and franchises of the West Chester and Phila. R. R. Co. whose road extended from West Chester via Wawa to Phila., and that this part of the road is operated at a profit. Whether or not the entire road is operated at a profit is a matter, in my opinion, that should be investigated by the Board of Public Works before the offer for the State's stock should be finally passed upon.

Respectfully yours,

Edgar Allan Poe. "

The following bills were ordered paid:

Bill of C. Hardy and C. C. Dorsey for indexing minutes of the Board of Public Works for years 1904 to 1911, inclusive, \$50.00.

Union Trust Co., rent of room 504 for December 1911 and January 1912, amount to \$62.99.

Mr. Albert S. J. Owens's letter of proposal to purchase a certain wardrobe in the State's Attorney's Office in Baltimore City, to which he had taken a fancy, together with his check for \$25.00 in payment of same, he having had said wardrobe appraised by Mr. C. Stewart Herring of the firm of O. Herring Sons & Company, Baltimore, who certified the value of the wardrobe to be between \$20 and \$25, was brought to the Board's attention, whereupon it was agreed to sell said wardrobe to Mr. Owens, and it was directed that check for \$25.00 in payment therefor be covered into the Treasury of the State.

The Board thereupon adjourned.

Robert P. Hahn

Secretary.